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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CARMEL STEVENS and LADALE
JACKSON, individually and on behalf of
all similarly situated,

Plaintiffs,

v.

STATE FARM MUTUAL, INC.; STATE
FARM GENERAL INCORPORATED
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 2:22-cv-06362 FLA (MAAx)

JOINT RULE 26(f) REPORT

Date: November 4, 2022
Time: 1:00 p.m.

Judge: Hon. Fernando L. Aenlle-Rocha

Action Filed: July 6, 2022
Removal Date: September 6, 2022

1 Plaintiffs Carmel Stevens and Ladale Jackson (“Plaintiffs”) and Defendants State
 2 Farm Mutual Automobile Insurance company (erroneously sued as State Farm Mutual,
 3 Inc.) and State Farm General Insurance Company (erroneously sued as State Farm
 4 General Incorporated) (the “Defendants”), (together, the “Parties”) submit this Joint
 5 Report pursuant to Rule 26(f)(2) of the Federal Rules of Civil Procedure and Local Rule
 6 26-1 in advance of the Initial Status Conference set for November 4, 2022 at 1:00 p.m.

7 The Parties met and conferred on October 20, 2022, to discuss the following topics
 8 in accordance with Rule 26(f) and Local Rule 26-1.

9 **A. Statement of the Case**

10 On July 6, 2022, Plaintiffs filed a class action complaint against Defendants in
 11 California state court on behalf of themselves and all other members of the general
 12 public in California that are similarly situated. Plaintiffs allege that Defendants
 13 discriminated against them and other African American life insurance policy holders by
 14 charging them higher premiums based on their estimated Glomerular Filtration Rate
 15 (eGFR), which tests kidney function. ECF No. 6, Ex. A. Plaintiffs allege that
 16 Defendants failed to take race into account when assessing the kidney health of life
 17 insurance customers by using a race-neutral formula—the Mayo Clinic’s quadratic
 18 equation—to calculate eGFR. Based on this allegation, Plaintiffs brought claims against
 19 Defendants for: (1) unfair business practices under California Business and Professions
 20 Code section 17200, et seq.; (2) violation of the Unruh Civil Rights Act; (3) negligence;
 21 and (4) violation of California Insurance Code section 10140. (*Id.*)

22 On September 6, 2022, Defendants removed this matter to this Court. ECF No. 1.
 23 The complaint seeks to certify the action as a class action and seeks restitution, statutory
 24 penalties, injunctive relief and attorneys’ fees against Defendants.

25 Defendants deny all allegations made by Plaintiffs. Defendants intend to file a
 26 Rule 12(b)(6) motion to dismiss for failure to state a claim for which relief can be granted
 27 on or before November 14, 2022. ECF No. 18.

B. Subject Matter Jurisdiction

Subject matter jurisdiction in this action is properly based on diversity, under 28 U.S.C. § 1332 because the Parties are diverse and the amount in controversy exceeds \$75,000. *See* EFC No. 1, Defendants' Notice of Removal.

First, Plaintiffs are residents of California. ECF No. 6, Ex. A, ¶ 9. Defendant State Farm Mutual Automobile Insurance is a citizen of Illinois, where it is incorporated and has its principal place of business. ECF No. 1. Defendant State Farm General Insurance Company is also a citizen of Illinois, where it is incorporated and has its principal place of business. *Id.*

Second, the amount in controversy exceeds \$75,000, exclusive of interests and costs, based on Plaintiffs' demand for recovery of allegedly overpaid insurance premiums, statutory penalties under the Unruh Act, and attorneys' fees. *See* ECF No. 1. Neither party disputes jurisdiction or service and Plaintiffs do not intend to file a motion to remand.

C. Legal Issues

i. Plaintiffs' Position

The following key legal issues are in dispute:

- Whether Defendants' eGFR standards differentiation violates California Business and Professions Code §17200;
- Whether Defendants' eGFR standards differentiation violates California Insurance Code §10140;
- Whether Defendants' eGFR standards differentiation violates the Unruh Civil Rights Act;
- The proper formula(s) for calculating and/or restitution owed to Class members;
- Whether members of the Class are entitled to statutory damages;
- Whether members of the Class are entitled to declaratory relief; and
- Whether members of the Class are entitled to injunctive relief.

1 ***ii. Defendants' Position***

2 At this time, Defendants believe the key legal issues are:

- 3 • Whether Plaintiffs have stated a claim under their causes of action for alleged
- 4 violations of California Business and Professions Code section 17200, the Unruh Civil
- 5 Rights Act, negligence, and California Insurance Code section 10410.
- 6 • Whether not taking race into account in calculating eGFR constitutes intentional
- 7 race discrimination under the Unruh Act.
- 8 • Whether Plaintiffs have suffered any injury or damages related to their causes of
- 9 action.
- 10 • Whether Defendants are legally prohibited from using race to calculate/adjust
- 11 eGFR scores.
- 12 • Whether the Unruh Act permits claims based on disparate impact.
- 13 • Whether Plaintiffs' negligence claim, which is purely based on economic loss, is
- 14 barred under the economic loss doctrine.
- 15 • Whether Defendants owe any tort duty of care to Plaintiffs.
- 16 • Whether there is a private right of action under California Insurance Code section
- 17 10140.
- 18 • Whether Defendants are prohibited under California Insurance Code section
- 19 10140 from taking race into account when underwriting insurance.

20 **D. Parties and Evidence**

21 ***i. Plaintiffs' Position***

22 **(a) Parties**

23 Plaintiffs: Carmel Stevens and Ladale Jackson, individually and on behalf of all

24 similarly situated (the putative class). Defendants: State Farm Mutual, Inc. and State

25 Farm General Incorporated. Plaintiff reserves the right to add parties as appropriate

26 and/or necessary.

27

28

1 **(b) Percipient Witnesses**

2 Plaintiffs are still determining which percipient witnesses they may rely on in
3 support of their claims, but at this time, anticipate that Plaintiffs Carmel Stevens and
4 Ladale Jackson, putative class members, customer service representatives who spoke
5 with Plaintiffs and/or putative class members about their life insurance policies, and
6 State Farm employees who were involved in issues relating to the use of eGFR in
7 connection with life insurance underwriting will be percipient witnesses in this matter.

8 **(c) Key Documents**

9 Plaintiffs anticipate that the key documents in this case will be documents relating
10 to Plaintiffs' and the putative class's life insurance policies, including the underwriting
11 process of their life insurance policies, Plaintiffs' and the putative class's medical
12 history, and documents related to any communications between Plaintiffs and/or the
13 putative class and Defendants regarding their life insurance policies will be the key
14 documents in this case.

15 **iii. Defendants' Position**

16 **(a) Parties**

17 As stated in Defendants' Notice of Removal, Plaintiffs filed claims against the
18 incorrect State Farm entity. The only entity that issued Plaintiffs' life insurance policies
19 is State Farm Life Insurance Company that is not a party to this litigation. *See* ECF No.
20 1, ¶ 18. All of Plaintiffs' causes of action relate to their life insurance premiums and the
21 underwriting process of State Farm Life Insurance Company. Defendant State Farm
22 General Insurance Company is not authorized by its articles of incorporation, and never
23 has been licensed to write life insurance in California or any other state in the United
24 States since its inception and was fraudulently joined in this lawsuit for the specific
25 purpose of defeating diversity. Further, neither named Defendant issued Plaintiffs' life
26 insurance policies at issue here. Therefore, it is Defendants' position that they cannot be
27 liable for any claims related to life insurance to Plaintiffs or other members of the
28 putative class.

1 The named Defendants are State Farm Mutual Automobile Insurance company
2 (erroneously sued as State Farm Mutual, Inc.) and State Farm General Insurance
3 Company (erroneously sued as State Farm General Incorporated). No publicly held
4 corporation owns 10% or more of the stock of Defendant State Farm Mutual Automobile
5 Insurance Company. ECF No. 8. Further, Defendant State Farm General Insurance
6 Company is wholly owned by Defendant State Farm Mutual Automobile Insurance
7 Company. *Id.*

8 **(b) Percipient Witnesses**

9 Defendants are continuing to evaluate which percipient witnesses they may rely
10 on in support of their defenses or to rebut any claims by Plaintiffs and intend to provide
11 a more complete list of witnesses in their Initial Disclosures. At this time, Defendants
12 anticipate that Plaintiffs, putative class members, customer service representatives who
13 spoke with Plaintiffs and/or putative class members about their life insurance policies,
14 and employees who were involved in issues relating to the use of eGFR in connection
15 with life insurance underwriting will be percipient witnesses in this matter.

16 **(c) Key Documents**

17 Defendants anticipate (i) documents or communications relating to Plaintiffs' and
18 the putative class's life insurance policies, including the underwriting process of their
19 life insurance policies, (ii) Plaintiffs' and the putative class's medical history, (iii)
20 documents related to any communications between Plaintiffs' and/or the putative class
21 and Defendants regarding their life insurance policies, and (iv) documents relating to the
22 use of eGFR in connection with life insurance underwriting will be the key documents
23 in this case. As discovery progresses, Defendants may identify additional relevant
24 documents and reserve the right to supplement this list at a later time.

25 **E. Damages**

26 ***i. Plaintiffs' Position***

27 Plaintiffs on behalf of themselves and the Class seek restitution of the funds
28 overpaid and improperly obtained by Defendants, statutory damages pursuant to the

Unruh Civil Rights Act violations, and all reasonable and necessary attorneys' fees and costs, in addition to equitable and injunctive relief.

ii. Defendants' Position

Defendants contend that Plaintiffs are not entitled to any damages. Plaintiffs' complaint, however, puts at issue more than \$75,000 in restitution, statutory damages, and attorneys' fees.

F. Insurance

There is no relevant insurance policy that may satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

G. Motions

i. Plaintiffs' Position

At this time, Plaintiffs do not anticipate filing any motions seeking to transfer venue or challenge the court's jurisdiction. Plaintiffs reserve the right to file motions to add other parties or claims and/or motions to amend pleadings as appropriate and/or necessary.

ii. Defendants' Position

Defendants do not anticipate the likelihood of motions seeking to add other parties or claims, file amended pleadings, transfer venue, or challenge the court's jurisdiction.

H. Dispositive Motions

i. Plaintiffs' Position

Plaintiffs anticipate filing a motion for class certification pursuant to Rule 23. Plaintiffs will oppose any motion to dismiss or motion for summary judgment/summary adjudication filed by Defendants. Plaintiffs reserve the right to file discovery motions or motions in limine at the appropriate times.

ii. Defendants' Position

Defendants intend to file a motion to dismiss Plaintiffs' complaint for failure to state a claim for which relief may be granted on or before November 14, 2022.

Should the Court deny Defendants' motion to dismiss, Defendants may file a motion for summary judgment/adjudication or other dispositive motion, and reserve the right to file discovery motions or motions in limine at the appropriate times.

Defendants also intend to oppose any dispositive motions and any class certification motion filed by Plaintiffs.

I. Manual for Complex Litigation

The Parties agree that there are no procedures from the Manual for Complex Litigation that will be needed for this case.

J. Status of Discovery

In light of Defendants' forthcoming motion to dismiss, the Parties have not yet begun discovery.

K. Discovery Plan

i. Initial Disclosures (Fed. R.2: Civ. P. 26(f)(3)(A))

After the Court denied the stipulation to continue the scheduling conference on October 19, 2022, the Parties promptly scheduled a meet and confer call to comply with the obligations set forth under Rule 26(f) of the Federal Rules of Civil Procedure. The Parties met and conferred on October 20, 2022 and agreed to exchange Initial Disclosures on November 3, 2022. The Parties do not anticipate needing any changes to the form or requirements for Initial Disclosures.

ii. Anticipated Subjects of Discovery (Fed. R. Civ. P. 26(f)(3)(B))

i. *Plaintiffs' Position*

Plaintiffs intend to seek discovery related to the life insurance policies of Plaintiffs and putative class members and the underwriting process for those policies, putative class members' medical histories, and any correspondence regarding Plaintiffs' and putative class members' life insurance policies and eGFR scores.

ii. *Defendants' Position*

Defendants believe subjects of potential discovery include, but are not limited to, discovery regarding the underwriting and life insurance policies Plaintiffs allege they

1 obtained from Defendants, putative class member's life insurance policies, the
2 underwriting process for those policies, and the use of eGFR in that process, Plaintiffs'
3 and putative class member's medical histories, and any correspondence with Defendants
4 regarding Plaintiffs' and putative class member's life insurance policies and eGFR
5 scores.

6 **iii. Timeline for Discovery (Fed. R. Civ. P. 26(f)(3)(B))**

7 If the Court denies Defendants' motion to dismiss, the Parties estimate they will
8 need at least 16 months to complete discovery in this matter. The Parties agree to meet
9 and confer regarding a class certification briefing schedule and intend to provide the
10 Court a proposed class certification briefing schedule.

11 **iv. Electronically Stored Information (Fed. R. Civ. P. 26(f)(3)(C))**

12 The Parties do not anticipate any issues regarding the disclosure or discovery of
13 electronically stored information ("ESI"). The Parties will meet and confer regarding
14 the appropriate manner of production for ESI as the need arises, as the information
15 related to this action may exist in many different formats (e.g. email, databases, etc.)

16 **v. Claims of Privilege or of Protection (Fed. R. Civ. P. 26(f)(3)(D))**

17 The Parties agree to use a protective order based off of, and substantially similar
18 to, the Central District's Stipulated Protective Order given the anticipated discovery
19 seeking and involving medical information as well as proprietary business information
20 and processes. The Parties will prepare the stipulated protective order and present it to
21 the Court for approval.

22 **vi. Limitations on Discovery (Fed. R. Civ. P. 26(f)(3)(E))**

23 **i. *Plaintiffs' Position***

24 Plaintiffs do not agree with Defendants' below assertion that discovery should
25 proceed in two phases.

26 **ii. *Defendants' Position***

27 Defendants propose that discovery should proceed in two phases, with the first
28 phase focusing only on Plaintiffs' individual claims and the second phase focusing on

1 classwide discovery. *See* Fed. R. Civ. P. 1 (Federal Rules “should be construed,
2 administered, and employed by the court and the parties to secure the just, speedy, and
3 inexpensive determination of every action and proceeding”); Fed R. Civ. P. 16 (Court’s
4 scheduling order may “modify the extent of discovery”). Defendants believe discovery
5 limited to Plaintiffs’ individual claims may resolve some or all of Plaintiffs’ claims in
6 this action.

7 **L. Discovery Cutoff**

8 Subject to this Court’s approval, the Parties agree to a trial date of July 16, 2024.
9 This date contemplates an additional six months beyond the suggested 12–15 months in
10 this Court’s Schedule of Pretrial and Trial Dates Worksheet because the Parties
11 anticipate complex scientific evaluation of eGFR calculations and extensive expert
12 analysis and testimony, as well as a motion to dismiss and a motion for class
13 certification. Assuming a trial date beginning July 16, 2024, the Parties propose a non-
14 expert discovery cut-off date of March 1, 2024, and an expert discovery cut-off date of
15 April 5, 2024.

16 Should the Court order a later trial date, the Parties agree and propose the
17 discovery cut-offs should be continued by a corresponding amount.

18 **M. Expert Discovery**

19 The Parties agree that expert witness disclosures, reports, and depositions should
20 occur after the Plaintiffs’ motion for class certification has been heard and no later than
21 90 days before the date set for trial as required by Rule 26(a)(2), or if the evidence is
22 intended solely to contradict or rebut the evidence on the same subject identified by
23 another party under Rule 26(a)(2)(B) or (C), within 30 days of the party’s disclosure.

24 The Parties anticipate extensive expert analysis and testimony regarding the
25 scientific issues related to eGFR scores and methods of testing kidney function.

26 **N. Settlement/Alternate Dispute Resolution**

27 The Parties have not yet discussed settlement. The Parties intend on attending
28 private mediation before this matter proceeds to trial.

1 **O. Trial Estimate**

2 Should the matter to proceed to trial on Plaintiffs' individual claims, the Parties
3 believe trial would take approximately 6–8 days. This is slightly longer the Court's
4 suggested 4 days because of the need for potentially substantial expert testimony on
5 kidney function and eGFR scores and formulas calculating such scores that Defendants
6 anticipate will be needed.

7 If a class is certified, the Parties believe an estimate of the trial length would be
8 significantly longer than 6–8 days but it is not possible at this time to determine that
9 estimate without knowing the scope or size of the class.

10 The Parties anticipate that Plaintiffs, putative class members, employees of State
11 Farm who communicated with Plaintiffs and/or putative class members, expert
12 witnesses on eGFR and kidney function, and employees of State Farm involved in the
13 underwriting process may be on the list of witnesses who will be called at trial.

14 **P. Trial Counsel**

15 Plaintiffs will be represented at trial by Carl Douglas, Jamon R. Hicks, Cameron
16 A. Stewart, and/or Bianca Perez of Douglas / Hicks Law, APC.

17 Defendants currently intend to be represented at trial by Marcellus McRae,
18 Heather L. Richardson, Bradley J. Hamburger, Tiaunia Henry and Daniel Nowicki of
19 Gibson, Dunn & Crutcher LLP.

20 **Q. Independent Expert or Master**

21 The Parties agree that that an independent expert or master will not be needed in
22 this matter.

23 **R. Schedule Worksheet**

24 Attached as **Exhibit A** to the Parties Joint Rule 26(f) Report is the completed
25 Schedule of Pretrial and Trial Dates Worksheet, which includes dates for which the
26 Parties met and conferred and agreed on.

27 **S. Other Issues**

28 The Parties are unaware of any other outstanding issues at this time.

1 Dated: October 21, 2022

Gibson, Dunn & Crutcher LLP

2
3 By: /s/ Bradley J. Hamburger

4 Bradley J. Hamburger

5 Attorneys for Defendants
6 State Farm Mutual Automobile Insurance
Company and State Farm General Insurance
Company

7 Dated: October 21, 2022

8 DOUGLAS / HICKS LAW, APC

9 By: /s/ Jamon R. Hicks

10 Jamon R. Hicks

11 Attorneys for Plaintiffs
12 Carmel Stevens and Ladale Jackson

ECF ATTESTATION

Pursuant to Local Rule 5-4.3.4, I, Bradley H. Hamburger, hereby attest that concurrence in the filing of this document has been obtained from Jamon R. Hicks.

Dated: October 21, 2022

By: /s/ Bradley J. Hamburger

Bradley J. Hamburger